

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	Case No. 1:20-cv-00795-PJK-SCY
JAMES M. SIMONES; Individually	)	
and as Trustee of the ANCIENT OF	)	
DAYS TRUST; JO ANN HARTMAN	)	
STOCKTON as Trustee of the ANCIENT OF	)	
DAYS TRUST; BROOKY STOCKTON	)	
as Trustee of the ANCIENT OF	)	
DAYS TRUST; and ADELINA MONNET,	)	
	)	
Defendants.	)	

**ORDER DENYING DEFENDANT’S MOTION FOR LEAVE TO FILE AN  
INTERLOCUTORY APPEAL**

THIS MATTER comes on for consideration of Defendant James M. Simones’ Motion for Leave to File an Interlocutory Appeal filed July 28, 2021 (ECF No. 84). The government has filed a response, see ECF No. 89, and a reply is unnecessary. Additionally, this motion was docketed as a notice of appeal and transmitted to the Tenth Circuit. See ECF No. 86. The Tenth Circuit has since dismissed the appeal for lack of jurisdiction because there was no final decision and this court has not authorized an interlocutory appeal under 28 U.S.C. § 1292(b). United States v. Simones, No. 21-2085, slip op. at 1–2 (10th Cir. July 30, 2021). Upon consideration of the motion, the court finds that it is not well taken and should be denied.

Mr. Simones seeks leave to file an appeal because “the court has refused to provide proof of claim that it has Article III judicial powers” and that this “is essential for the court to deprive the defendant of his property and rights to property.” ECF No. 84 at 1. But as described in a

recent order, this court has jurisdiction over the case. See ECF No. 75. Thus, the basis of Mr. Simones' appeal does not "involve[] a controlling question of law as to which there is substantial ground for difference of opinion" nor would it "materially advance the ultimate termination of the litigation." 28 U.S.C. § 1292(b). Exercising its discretion, see Swint v. Chambers Cnty. Comm'n, 514 U.S. 35, 47 (1995), this court determines that an appeal is not justified.

NOW, THEREFORE, IT IS ORDERED that Defendant James Simones' Motion for Leave to File an Interlocutory Appeal filed July 28, 2021 (ECF No. 84) is denied.

DATED this 2nd day of August 2021, at Santa Fe, New Mexico.

/s/ Paul Kelly, Jr.  
UNITED STATES CIRCUIT JUDGE  
Sitting by Designation